

***COMMONWEALTH LAND TITLE
INSURANCE COMPANY***

**2 LOGAN SQUARE, 5th FLOOR
PHILADELPHIA, PENNSYLVANIA 19103**

NAIC COMPANY #50083

**MARKET CONDUCT EXAMINATION REPORT
AS OF JUNE 30, 1999**

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**Prepared by
Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.**

Independent Contract Examiners

September 7, 2000

The Honorable William J. Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected rating, underwriting, claims and general business practices of the title insurance business of Commonwealth Land Title Insurance Company has been conducted. The Company's records were examined at its Colorado State Administrative Offices located at 1099 18th Street, Suite 600, Denver, Colorado.

The examination covered a one-year period from July 1, 1998 to June 30, 1999.

A report of the examination Commonwealth Land Title Insurance Company is herein respectfully submitted.

Duane G. Rogers, Esq. &
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF
COMMONWEALTH LAND TITLE INSURANCE COMPANY**

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COMPANY PROFILE

Commonwealth Land Title Insurance Company, hereinafter referred to as “the Company”, is a wholly owned subsidiary of Land America Financial Group, a Virginia Corporation. The Company is authorized to write title insurance coverage in Colorado and was first licensed in the State of Colorado in 1969.

The Company is engaged in the title insurance business on a nationwide basis and, is licensed as a title insurer in 49 states, the Virgin Islands, and Puerto Rico. The Company’s ultimate parent, Land America, is a holding company for a group of title insurers including Commonwealth Land Title Insurance Company, Transnation Title Insurance Company, and Lawyers Title Insurance Corporation.

The Company maintains its national headquarters in Philadelphia, PA and provides title insurance nationwide through independent agents and direct operations. Underwriting review and Claims adjustment are conducted through various divisional offices located throughout the United States. Colorado underwriting operations are managed through the Company’s Denver Office. Colorado claims are handled in the Company’s Regional Claims Office located in Seattle, WA, however, many claims were administered out of the Company’s Denver Office during the initial period of the examination.

For the fiscal year 1998 the Company reported \$13,496,860 in direct premiums in Colorado representing 5.84% of the total Colorado title insurance market. The Company’s direct premium earned were \$13,091,783.¹

¹ Figure representing direct premium written provided by the Company as reported in its Schedule T of Form 9 of the Company’s annual statement. Figure representing market share provided by the Company.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed to assist the Colorado Commissioner of Insurance to meet certain statutory charges by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the Colorado Division of Insurance based on the National Association of Insurance Commissioners Model Procedures. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company and its agents. The examination covers one calendar year of the Company's operations, from July 1, 1998 to June 30, 1999.

File sampling was based on review of systematically selected samples of underwriting and claims files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

An error tolerance level of plus or minus \$10.00 was allowed in most cases where monetary values were involved, however, in cases where monetary values were generated by computer or system procedure a \$0 tolerance level was applied in order to identify possible system errors.

Additionally, a \$0 tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following seven Company operations:

1. Advertising
2. Complaint Handling.
3. Agent Licensing.
4. Underwriting Practices.
5. Rate Application.
6. Claims Settlement Practices.
7. Financial Reporting

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations which do not reference specific insurance laws, regulations, or bulletins are presented to encourage improvement of company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of eighteen issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all title insurers authorized to transact title insurance business in Colorado. These twenty issues fell into five of the seven categories of Company operations as follows:

Complaint Handling:

In the area of complaint handling, one compliance issue is addressed in this report. This issue arose from Colorado statutes and regulations which require insurers offering coverage in Colorado to adopt and implement procedures for addressing and responding to consumer complaints and requires all insurers to maintain a complete complaint register. With regard to this issue, it is recommended that the Company review its complaint handling procedures and amend those procedures to assure future compliance with applicable Colorado laws.

Underwriting Practices:

In the area of underwriting, seven (7) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado. The incidence of noncompliance in the area of underwriting exhibits a frequency range between 3% and 70%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all seven (7) issues.

Rate Application:

In the area of rating, five (5) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado and whenever title insurers or the insurer's agents conduct real estate or loan closing and/or settlement service for Colorado consumers. The incidence of noncompliance in the area of rating demonstrates an error frequency between 5% and 91%. With regard to the five (5) compliance issues addressed in relation to the Company's rating practices, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all five (5) issues.

Claims Settlement Practices:

In the area of claim settlement practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 18% and 42%. Concerning the three (3) compliance issues encompassing Company claims practices, it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three (3) issues.

Financial Reporting:

In the area of financial reporting and other miscellaneous compliance issues, two (2) compliance issues are addressed in this report. One issue arose from specific Colorado statutory and regulatory requirements requiring title insurers to file certain financial data and to provide annual statistical justification and data to support title insurance rates used in Colorado. The other issue arose from Colorado statutory and regulatory prohibitions regarding paying Company funds into escrow accounts to cover escrow shortages. With regard to the first compliance issue, it is recommended that the Company review its annual filing procedures and make the necessary changes to assure future compliance with applicable statutes and regulations. With regard to the second issue, it is recommended that the Company review its procedures related to maintenance and management of Company escrow accounts and make necessary changes to assure future compliance with the timely response requirements set forth under Colorado law.

PERTINENT FACTUAL FINDINGS

Market Conduct Examination Report of COMMONWEALTH LAND TITLE INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

Relating to

COMPLAINT HANDLING

Issue A: Failure to maintain minimum standards in a record of written complaints.

Section 10-3-1104(1), C.R.S., requires all insurance companies operating in Colorado to provide for complaint handling procedures and provides that:

(i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (I), “complaint” shall mean any written communication primarily expressing a grievance.

3 CCR 702-6(6-2-1) Attachment A promulgated pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118, C.R.S., sets forth the minimum information required to be maintained by insurance companies in their respective complaint registers as follows:

Attachment A. Minimum Information Required in Complaint
Record

<u>Column</u> A	<u>Column</u> B		<u>Column</u> C	<u>Column</u> D	<u>Column</u> E	<u>Column</u> F	<u>Column</u> G	<u>Column</u> H
Company Identification Number	Func tion Cod e	Reas on Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Department Complaint	State of Origin

Examination of the Company’s complaint record effective for the period under examination demonstrated the Company was not in compliance with all of the requirements of 3 CCR 702-6(6-2-1). Specifically, Colorado Insurance Regulation 3 CCR 702-6(6-2-1), under Column H, the regulation specifically requires that “[t]he complaint record shall note the state from which the complaint originated. Ordinarily this will be the state of the residence of the complainant.” The Company’s Complaint Log, however, did not contain a column indicating of origin of the complaint.

Under Column G, the regulation requires complaints to be classified to indicate if the origin of the complaint was from the Colorado Division of Insurance or whether the complaint was received otherwise. The Company’s complaint record did not include a column specifying whether complaints originated with the Division or not.

Under Column B, the regulation requires complaints to be classified by Company function (i.e. underwriting, marketing and sales, claims, policyholder services). Although the Company’s Complaint Log contained a column entitled the “nature of the complaint” or a reason column, the Company’s Complaint Log did not included a Column B function code as such is identified and defined by 3 CCR 702-6(6-2-1).

Under Column C, the regulation requires company complaint registers to indicate the line type. Complaints are to be classified according to the line of insurance involved. Although title insurers are only authorized to write title insurance in Colorado and, therefore, all complaints would most likely be classified as title insurance line type complaints, the Company's complaint register should have included a column indicating the line type, however, the Company's complaint log did not.

Recommendation #1:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the requirements set forth in 3 CCR 702-6(6-2-1) adopted pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118, and 10-4-4, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its complaint register to include the omitted information and that the Company's complaint register is in compliance with the minimal requirements of the Colorado regulation.

PERTINENT FACTUAL FINDINGS

for

UNDERWRITING PRACTICES

Issue B: Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states in pertinent parts:

(C) Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed.

(L) Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit) (i) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanics or materialman's liens, except when said coverage or insurance is extended to the insured under the terms of the policy and (ii) of the circumstances described in Paragraph C of Article VII of these Regulations, under which circumstances the title insurer is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage").

The Company's standard printed schedule B policy exceptions contain the following general exclusionary language for all unfiled mechanic or materialman's liens:

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

- 4 Any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records.

A review of the Company's underwriting and rating manuals demonstrated that, during the period under examination, the Company offered coverage for unfiled mechanic's and materialman's liens. Such coverage was available through the Company via deletion of the printed exceptions, an extended coverage endorsement, or by using Company endorsement 110.1 or 110.2 which insured over particular named exceptions. In addition, a review of Company underwriting and escrow files demonstrated that, during the period under examination, the Company conducted several closings in coordination with the issuance of title insurance policies insuring title to single family dwellings. As indicated by the Regulation cited above, whenever a title insurer or its agent conducts a closing in relation to a title policy issued and is responsible for recording the documents resulting from the real estate transaction,

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(L) mandates coverage for all matters appearing of record prior to the time of recording (GAP coverage).

The following sample demonstrated that, although the Company offered coverage for unfilled mechanic's and materialman's liens and was often responsible for the regulatory mandated GAP coverage, the Company failed to make the appropriate written disclosures regarding its general requirements for unfilled mechanic's or materialman's lien coverage and/or failed to provide notice of the existence of GAP coverage where such notices were required:

TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	32	32%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 32 exceptions (32% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. Each policy excepted coverage for unfilled mechanics or materialman's liens and/or GAP coverage. Coverage for unfilled mechanic's or materialman's liens was available through the Company by endorsement and, as the Company or its agent conducted the closing in each instance, GAP coverage was mandated by law. However, in each instance the Company failed to provide the insured with the requisite written notice regarding the availability and/or prerequisites of such coverages as required by 3 CCR 702-3 (3-5-1)(VII)(L).

More specifically, in 12 of the 32 exceptions, the Company was unable to provide documentation that it had provided the insured with notice of the existence of Gap coverage as mandated by Colorado law. In the remaining 20 instances the Company was unable to provide documentation that it provided prospective insureds with the requisite notices regarding the existence of GAP coverage and of the Company's general requirements for the deletion of the Company's standard exception for unfilled mechanic's liens.

The 32% error frequency reported here is augmented by the fact that only 32 of the 100 policies reviewed were subject to this standard and required the written disclosure pertaining to the unfilled mechanic's lien and GAP coverages. Specifically, only 32 of the 100 files reviewed were owner's title insurance policies insuring single family residences in which the Company, or its agent, conducted the real estate closing and was responsible for recording the documents of conveyance and did not have Owner's Extended Coverage or an endorsement removing the general exception or exclusion for unfilled mechanic or materialman's liens and GAP coverage. Therefore, the written disclosures were only

required in 32 of the 100 files reviewed. The Company failed to make the requisite disclosures in all 32 files which demonstrated that, whenever the written disclosures were required, the Company's error frequency was 100%.

Recommendation #2:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(C) and (L). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company procedures necessary to implement the requisite change so that those procedures and guidelines include a requirement that will assure the Company will provide prospective insureds with written notification of the Company's general requirements for the deletion of the Company's general exception or exclusion to coverage for unfiled mechanic's liens and GAP coverage.

In addition, the Company should be required to perform a self audit of all claims denied due, in whole or in part, to the general exception or exclusion contained in the title policy for unfiled mechanic or materialman's liens. The self audit should cover a period from January 1, 1998 to present. After identifying the target denials, the Company should be required to accept liability for all claims identified by the audit in which the Company failed to provide the requisite written notice.

Issue C: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.

Section 10-3-1104(1), C.R.S. defines certain unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
- (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .

A review of the following sample demonstrated that, whenever the Company issued a title insurance policy in Colorado during the period under examination, the Company failed to identify, itemize or list policy endorsements in a declarations page or otherwise include such information within the written terms of title insurance policies issued.

**TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	70	70%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 70 exceptions (70% of the sample) wherein the Company omitted applicable endorsements. In all 70 exceptions the Company issued title insurance policies without itemizing the inclusive endorsements on a policy declaration page or otherwise disclosing such information within the written terms of the policy issued.

Furthermore, a review of the Company's policy forms demonstrated that only 1 of the 7 most common title insurance and title guarantee policy forms used by the Company in Colorado during the period under examination contained a declarations page or policy jacket which included a section for itemizing endorsements. Specifically, the policy jacket for the ALTA Short Form Residential Loan Policy, issued by the Company to lenders in coordination with permanent loans secured by residential property of one to four family dwellings, contained a checklist to indicate endorsements incorporated into the policy issued.

Other than the short form discussed above, the Company's only method of notifying prospective insureds of the endorsements requested by an insured for inclusion in the

prospective title insurance policy was to provide a statement of charges at the top of the respective insured/applicant's initial commitment papers.

Upon issuing the title insurance policy the terms of the last update of the commitment were incorporated into the title policy, however, the Company omitted the listing of inclusive endorsements that appeared within the terms of the original commitment papers. Therefore, upon issuance of the policy, any endorsements or riders were not listed or otherwise itemized within the terms of the title policy issued. In addition, the only indication that an endorsement or rider amended a particular policy was application of a Company practice requiring the issuing agent to place a copy of the endorsement or rider behind the Company's copy of the title policy maintained in the underwriting file. The endorsements were not otherwise "attached" to the policy and the pages of the policy were not numbered (i.e. 1 of 1) to identify the length of the policy or otherwise identify the existence of any endorsements or riders.

Recommendation #3:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its policy forms and endorsements and underwriting guidelines and procedures and any other requisite Company operations so that all title policies issued by the Company incorporate a listing of any endorsements and/or riders on the policy declaration page or within the terms of the policy as to all future policies issued by the Company.

Issue D: Failing to adopt, print, and/or make available to the public complying schedules of rates, fees and charges for regularly issued title insurance policies and/or regularly rendered closing and settlement services.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(C) and (F)) adopted pursuant in part to the authority granted under §§ 10-1-109, 10-3-110, 10-11-118, and 10-4-401 et seq., provides in pertinent parts:

IV. SCHEDULE OF RATES, FEES AND CHARGES - TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees.

B. As long as it remains effective, such schedule shall be made readily available to the public and prominently displayed in a public place in each of the offices of the title insurer or its agent in the particular county to which they relate. On individual request, copies of such schedules shall be furnished to the public.

C. Such schedule shall show the entire charge to the public for each type of title policy regularly issued by the insurer, either by a statement of the particular charge for each type of policy in given amounts of coverage, or by a statement of the charge per unit of the amount of coverage, or a combination of the two.

F. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(V)(A), (B), and (E)) provide:

V. SCHEDULE OF FEES AND CHARGES - CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services.

B. Such a schedule shall show the entire charge to the public for each type of closing and settlement service regularly rendered by the title entity, either by a statement for each type in given amounts or by statement of the charge per unit of the amount of the transaction, or a combination of the two.

E. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

Upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. Moreover, the examiners requested the Company produce information which demonstrated compliance with the cited regulations which require title insurers offering coverage in Colorado to adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and regularly rendered closing and settlement services.

In response to the examiners' request, the Company produced three notebooks containing rates and rating rules for agencies located in eight (8) Colorado Counties (Boulder, Adams, Arapahoe, Denver, Douglas, Jefferson, Larimer, and Weld). These notebooks were produced with the intent and in a fashion suitable for public dissemination in compliance with the regulations cited above. The notebooks also contained copies of abbreviated Rate Cards made available to the public as a quick reference to Company rates and charges in the respective county.

The Company's Rate Cards and the schedule of rates contained in the Notebooks provided by the Company did not comply with the requirement of the law. Specifically, the schedule of rates set forth in the front of each Notebook, replicated from the Company's Rate Cards which were regularly disseminated to the public in accordance with 3 CCR 702-3(3-5-1), were printed in a type smaller than ten (10) point.

Additionally, in response to the examiners' request for copies of any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees, the Company produced three (3) additional rate cards covering three (3) additional Colorado Counties (Garfield, Morgan, and Park). As in the case of the notebooks discussed above, these rate cards were made available to the public as a quick reference to Company rates and charges in the respective county and were produced with the intent and in a fashion suitable for public dissemination in compliance with 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I).

The three (3) Company Rate Cards did not comply with the requirements of the law because the Rate Cards provided by the Company for these three counties did not show the entire charge for each type of policy issued by the Company as required by 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I).

Finally, based on the fact that the Company failed to produce a public information schedule of rates and fees a majority of Colorado counties, the examiners requested the Company to provide copies of all materials printed by the Company and made available to the public effective in the remainder of Colorado counties where the Company maintained operations

and/or wrote, or solicited title insurance business. The material provided was to be as comprehensive as the binder's previously produced and were to include rates, fees, and charges for endorsements, guarantees and other forms of coverage. The Company indicated such material was not available demonstrating noncompliance with the requirements of the cited regulations.

Recommendation #4:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the cited provisions of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has printed and made available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and regularly rendered closing and settlement services. Such schedules should include information pertaining to endorsements, guarantees and other forms of insurance coverages and should contain copies of the forms applicable to such fees. In addition, the Company should be required to review the information contained in the new schedules and verify that all rates, fees, and charges contained therein have been filed with the Division in accordance with the 3 CCR 702-3(3-5-1) and the and §§10-4-401 et seq., C.R.S.

The Company should also be required to amend its existing Notebooks and Rate Cards so that the Company's schedule of rates and fees are made available to the public in a form that complies with the requirements of the law.

Issue E: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states:

(G) No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.

The following sample demonstrated that, in some instances, the Company or its agent provided closing and/or settlement service in Colorado during the period under examination without obtaining the requisite written closing instructions signed by all necessary parties.

**TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	41	41%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 41 exceptions (41% of the sample) wherein the Company or its agent provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

Twenty-eight of the 41 reported files were loan closings for refinance transactions. All 28 files contained some form of closing instructions from the lender, however, none of the files contained closing instructions or directives from the borrower. In addition, the Company failed to obtain the lender's signature in 11 of the 28 refinance files reported here. The remaining 13 files were files in which the Company conducted either the real estate closing, loan closing, or both, however, the files did not reflect the Company obtained the requisite closing instructions signed by all relevant parties.

Recommendation #5:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(G). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company operations necessary to assure that the Company and its agents will obtain written instructions from all necessary parties whenever the Company or its agents perform closing and settlement services in Colorado.

Issue F: Failure to follow Company underwriting procedures and/or guidelines and/or discriminatory underwriting practices.

Section 10-3-1104(1)(f)(II), C.R.S. defines an unfair business practice in the business of insurance as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

**TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	43	43%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination showed 43 exceptions (43% of the sample) wherein the Company failed to follow its own underwriting guidelines and/or engaged in discriminatory underwriting practices.

Many of the files reviewed contained more than one underwriting error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 43%, however the 100 files reviewed contained a total of 49 errors wherein the company issued title policies without following the Company's underwriting guidelines and/or engaged in discriminatory underwriting practices. Fifteen errors resulted from the issuing entity's failure to obtain underwriting approval prior to issuing certain endorsements. The remaining 34 errors arose from the Company's failure to delete standard exceptions from title policies in accordance with Company underwriting /rating guidelines. These findings were as follows:

Failing to Follow Underwriting Guidelines:

Among other restrictions, the Company's Colorado Examiner's Manual required Company agents to obtain underwriting approval prior to issuing endorsements 100.30 (mineral endorsement), 115.2 (PUD endorsement), and/or 130 (Owner's Extra Protection).

For example, prior to issuing the Form 100.30 endorsement, the Company's manual required:

APPROVAL

After approval of the project by the Division Manager, Division Legal

Department and Home Office Legal Department, the county personnel may commit to the coverage as to such a project.

On individual tracts, the county should submit such requests to the Division Legal Department. Where unusual risk is apparent, additional evaluation by Home Office Underwriting and the Chief Operating Officer may be indicated.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & COMMONWEALTH LAND TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 211-3 (ed. effective 9/1/83).

Eight (8) of the 43 reported files contained instances in which the Company issued a Form 100.30 endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

In addition, the Company's manual contained the following rule regarding prior approval and issuance of endorsement 115.2:

County Chief Title Officer or other designated county authority.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & COMMONWEALTH LAND TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 252-1 (ed. effective 9/1/83).

Five (5) of the 43 reported files contained instances in which the Company issued a Form 115.2 endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

Prior to issuing the form 130 endorsement, the Company's manual required:

APPROVAL

County Manger or designated county authority.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & COMMONWEALTH LAND TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 263-1 (ed. effective 7/1/85).

2 of the 43 reported files contained instances in which the Company issued the Form 130 Extra Protection endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

Discriminatory Underwriting Practices:

During the period under examination the Company's underwriting/rating rule regarding deletion of the standard preprinted exceptions stated:

Article 9.2 Deletion of Printed Exceptions

Mechanics Lien Protection

Completed Improvements	NC
Deletion	50% OF BASIC
Modified Language	30% OF BASIC
Survey Protection	NC

Commonwealth Land Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, §A, Article 9.2(ed. effective 4/10/97).

The 5 standard preprinted Schedule B exceptions the Company used in Colorado during the period under examination were:

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Taxes and assessments for the year _____, not yet due or payable.

Commonwealth Land Title Insurance Company, ALTA LOAN POLICY, (ed. 10/17/92)

Although the Company routinely deleted some or all of the standard preprinted exceptions from ALTA loan policies issued by the Company in Colorado during the period under examination, the Company's underwriting and rating rules did not adequately address deletion of all the cited standard exceptions. Specifically, the Company's rate filings and accompanying underwriting guidelines only established peripheral circumstances and charges for deletion of standard exception 3 (survey protection) and exception 4 (unfiled mechanics lien protection).

Aside from the information provided in the Company's rule cited above, the Company did not have any underwriting guidelines that established identifiable parameters, criteria, or other

articulable standards for determining when or under what circumstances the standard exceptions should be deleted from lender's policies issued by the Company.

Similarly, the Company's rate filings and underwriting guidelines effective for Colorado during the period under examination indicated that, provided underwriting guidelines were satisfied preprinted exceptions 1-4 would be deleted from owner's policies at no charge.

The 4 standard preprinted Schedule B exceptions the Company used for owner's policies issued in Colorado during the period under examination were:

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Commonwealth Land Title Insurance Company, STANDARD OWNERS POLICY, (ed. 11/24/99)

Notwithstanding the filed rate, a review of the Company's underwriting manuals demonstrated that the Company did not have any underwriting guidelines which established identifiable parameters, criteria, or other articulable standards for determining when or under what circumstances the standard exceptions should be deleted from owner's policies issued by the Company.

The standard preprinted exceptions contained in both owner's and lender's title insurance policies are among the broadest exclusions contained in title insurance products. Deletion of the preprinted exceptions provides a significant increase in coverage. Although the Company's rate filings effective in Colorado during the period of examination indicated that, provided underwriting guidelines were satisfied, the exceptions could be deleted at no charge, a review of the Company's underwriting guidelines demonstrated the Company did not possess any identifiable parameters, criteria, or other articulable standards for determining when the standard exceptions should be deleted.

The Company's failure to adopt and/or implement articulable underwriting guidelines and/or standards for the deletion of the standard exceptions under both lender and owner title policies issued by the Company permitted disparate treatment among Colorado insureds. The potential for this disparate treatment was augmented by the fact that the Company indicated the issuing entity would not make an attempt to delete the standard exceptions under either an owner's or lender's title policy unless the insured requested deletion of the exceptions. Thus, the onus of

determining the availability of the coverage extended by deleting the exceptions was placed on the insured consumer, often resulting in disparate coverage among similarly situated risks. Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever is an unfair business practice as defined by §10-3-1104(1)(f)(II), C.R.S.

Fourteen of the 43 reported files contained owner's policies wherein the Company failed to delete one or more of the standard exceptions in compliance with the Company's rate manual. The insureds in these 14 instances were charged premiums commensurate with similar risks located in the respective county where the property for which the Company insured title was located; however, since the Company failed to delete any of the standard exceptions, these 14 insureds incurred a significant reduction in coverage. The files were not documented to indicate why the exceptions were not deleted and, since the Company did not have any underwriting guidelines setting forth the requirements and preconditions for deletion of the exceptions, the examiners were unable to ascertain compliance with Company procedures and Colorado law in all 14 instances.

Twenty of the 43 reported files contained lender's policies wherein the Company failed to delete any of the standard exceptions in compliance with the Company's rate manual. The insureds in these 20 exceptions were charged premiums commensurate with similar risks located in the respective county where the property for which the Company insured title was located; however, since the Company failed to delete any of the standard exceptions, these 20 insureds incurred a significant reduction in coverage. The files were not documented to indicate why the exceptions were not deleted and, since the Company did not have any underwriting guidelines setting forth the requirements and preconditions for deletion of the exceptions, the examiners were unable to ascertain compliance with Company procedures and Colorado law in all 20 exceptions.

Recommendation #6:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(f)(II), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has either amended its underwriting rules to comport with the Company's practices or provide the Division with information demonstrating the Company has implemented procedures which will assure that all title policies issued by the Company will be issued in Compliance with written Company underwriting rules, procedures and/or standards.

With regard to discriminatory underwriting practices and deletion of standard exceptions, the Company should be required to provide evidence demonstrating that the Company has adopted underwriting guidelines which set forth clear, articulable underwriting standards which define and

identify when and under what circumstances the standard preprinted exceptions must be deleted under both owner's and lender's coverages. The guidelines should be accompanied by a statement indicating the Company will distribute the guidelines to all persons and entities involved in the underwriting process and assurances that those guidelines will be followed and applied equitably whenever the Company issues a title insurance policy in Colorado.

Issue G: Issuing title insurance policies without obtaining a certificate of taxes due.

Section 10-11-122, C.R.S. provides:

(3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

**TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	3	3%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 3 exceptions (3% of the sample) wherein the Company issued title insurance policies without first obtaining a certificate of taxes due or other equivalent documentation. None of the files reported contained information demonstrating that the respective insured had provided written instructions waiving the requirement.

The initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1998 to June 30, 1999. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's failure to obtain a certificate of taxes due prior to issuing title insurance policies in compliance with §10-11-122(3), C.R.S. were as follows:

**LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
460	50	21	42%

An examination of 50 systematically selected underwriting files, representing 11% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 21 exceptions (42% of the sample) wherein the Company issued title

insurance policies without first obtaining a certificate of taxes due or other equivalent documentation. None of the files reported contained information demonstrating that the respective insured had provided written instructions waiving the requirement.

Recommendation #7:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-11-122(3), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has adopted and implemented procedures which will assure that, whenever the Company issues a title policy in Colorado, the Company or its agent will obtain a certificate of taxes due or other equivalent documentation for the subject property of which title is to be insured.

Issue H: Making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.

Section 10-3-1104(1)(a)(I), C.R.S. defines an unfair business practice in the business of insurance as:

- (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
 - (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(G)) provide:

IV. SCHEDULE OF RATES, FEES AND CHARGES - TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees.

B. As long as it remains effective, such schedule shall be made readily available to the public and prominently displayed in a public place in each of the offices of the title insurer or its agent in the particular county to which they relate. On individual request, copies of such schedules shall be furnished to the public.

C. Such schedule shall show the entire charge to the public for each type of title policy regularly issued by the insurer, either by a statement of the particular charge for each type of policy in given amounts of coverage, or by a statement of the charge per unit of the amount of coverage, or a combination of the two.

D. Such schedule may include a statement that additional charges are made when unusual conditions of title are encountered or when special or unusual risks are insured against and that special charges are made for special services rendered in connection with the issuance of a title policy.

E. Such schedule may provide for different rates, fees or charges for title policies covering property in different counties or separate schedules may be adopted for title policies covering property in different counties.

F. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(V)(A)-(F)) provide:

V. SCHEDULE OF FEES AND CHARGES - CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services.

B. Such a schedule shall show the entire charge to the public for each type of closing and settlement service regularly rendered by the title entity, either by a statement for each type in given amounts or by statement of the charge per unit of the amount of the transaction, or a combination of the two.

C. Such schedule may include a statement that additional charges are made when usual conditions are encountered.

D. Such schedule may provide for different fees and charges for closing and settlement services concerning property in different counties or separate schedules may be adopted for closing and settlement services concerning property in different counties.

E. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans.

Upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. In response to that request, the Company produced three notebooks containing rates and rating rules for agencies

located in eight (8) Colorado Counties (Boulder, Adams, Arapahoe, Denver, Douglas, Jefferson, Larimer, and Weld). These notebooks were produced with the intent and in a fashion suitable for public dissemination in compliance with the regulations cited above. The notebooks also contained copies of abbreviated rate cards made available to the public as a quick reference to Company rates and charges in the respective county.

Close review of the notebooks disclosed that the Company was not in compliance with Colorado law. Specifically, some of the printed material contained statements, omissions, and/or representations that misrepresented the benefit, advantages and/or terms of title insurance policies. The errors were as follows:

Boulder County Notebook: (Boulder Office)

The schedule of rates printed in the Rate Card in the front of the manual contained a rate schedule that deviated from the Company's filed rates for Boulder County. Specifically, the premium charges set forth in the Rate Card were \$30.00 higher than the filed rates across the board.

The Rate Card also indicated that a re-issue discount of 50% of the base rate was available for policies issued within five years of a prior policy. The Company's rate filings, however, indicated that the 50% discount was only available for policies in which the commitment was ordered within the first 2 years of the prior policy. From 2 to 3 years of the effective date of the prior policy, the discount factor was 25% of the base rate. From 4 to 5 years of the effective date of the prior policy, the discount factor was 10% of the base rate.

In addition, the closing fees set forth under the rate card were also inaccurate. The Rate Card indicated that the minimum charge for a commercial closing in Boulder County was \$200.00 during the period under examination, however, the filed rate indicated the appropriate charge for a commercial closing in Boulder County was a minimum charge of \$100.00.

The Rate Card also indicated that the closing fee for a residential conventional loan closing was \$150.00 during the same period, however, the filed rate indicated that such a loan closing was \$50.00 (\$75.00 if the Company prepared the HUD-1) in Boulder County.

Furthermore, the Rate Card indicated that the schedule of rates listed within the body of the card were effective June 15, 1998, however, the Company did not have a rate filing for Boulder County with a corresponding effective date of June 15, 1998.

El Paso County Notebook: (Colorado Springs Offices)

The schedule of rates printed in the Rate Card in the front of the manual contained a rate schedule that deviated from the Company's filed rates for El Paso County. Specifically, the premium charges for the base rate deviated at certain policy limits. For instance, the filed rate

or premium charge for a policy issued with \$100,000 of coverage was \$620.00, however, the rate card indicated the premium charge for \$100,000 of coverage was \$645.00, \$25.00 more than the filed rate. Likewise, the filed rate or premium charge for a policy issued with \$50,000 of coverage was \$495.00, however, the rate card indicated the premium charge for \$50,000 of coverage was \$525.00, \$30.00 more than the filed rate.

In addition, the schedule of rates printed in the Rate Card in the front of the manual contained a rate schedule that deviated from the Company's filed rates for El Paso County. Specifically, the column in the schedule of rates representing premium charges for loan policies insuring "junior lenders" was inaccurate. The filed rate junior lenders rate was 75% of the base rate. The junior lender rate column contained in the Company's schedule of rates printed in the Rate Card were not an accurate reflection of the filed rate.

The Rate Card contained in the front of the Notebook also indicated that the premium charges for a loan policy issued simultaneously with an owner's policy was a flat rate of \$80.00, however, the filed rate for the same in El Paso County was \$75.00 during the period under examination.

Another error in the Rate Card indicated that a re-issue discount of 50% of the base rate was available for policies issued within five years of a prior policy. The Company's rate filings, however, indicated that the reissue discount in El Paso County was only 45%.

Finally regarding the El Paso rate Card and Notebook, the Rate Card indicated that a refinance discount of 50% of the base rate was available in El Paso County for all policies issued within 10 years of the original purchase of the property or within 10 years of the last refinance transaction. The 50% discount, however, was only available during the first 5 years. Furthermore, although the refinance discount was available for up to six years, the discount factor was reduced to 40% after the 5th year.

Boulder, Larimer & Weld County Notebook: (Longmont Office)

The schedule of rates printed in the Rate Card in the front of the manual contained a rate schedule that deviated from the Company's filed rates Boulder, Larimer & Weld County. Specifically, just as the case for the Boulder County Rate Card, the premium charges set forth in the tri-county Rate Card were \$30.00 higher than the filed rates across the board.

The Rate Card also indicated that a re-issue discount of 50% of the base rate was available for policies issued within five years of a prior policy. The Company's rate filings, however, indicated that the 50% discount was only available for policies in which the commitment was ordered within the first 2 years of the prior policy. From 2 to 3 years of the effective date of the prior policy, the discount factor was 25% of the base rate. From 4 to 5 years of the effective date of the prior policy, the discount factor was 10% of the base rate.

In addition, the closing fees set forth under the rate card were also inaccurate. The Rate Card indicated that the minimum charge for a commercial closing in Boulder, Larimer and Weld County was \$200.00 during the period under examination, however, the filed rate indicated the appropriate charge for a commercial closing in Boulder County was a minimum charge of \$100.00.

The closing fees set forth under the rate card were also inaccurate. The Rate Card indicated that the minimum charge for a commercial closing in the three counties was \$200.00 during the period under examination, however, the filed rate indicated the appropriate charge for a commercial closing in these counties was a minimum charge of \$100.00.

In addition, the Rate Card indicated that the closing fee for a residential conventional loan closing was \$150.00 during the same period, however, the filed rate indicated that such a loan closing was \$50.00 (\$75.00 if the Company prepared the HUD-1) in these three counties.

Finally, pertaining to the tri-county rate card, the Rate Card indicated that the schedule of rates listed within the body of the card were effective June 15, 1998, however, the Company did not have a rate filing for Boulder, Larimer, and Weld County with a corresponding effective date of June 25, 1998.

Recommendation #8:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. and Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(G) & (V)(A)-(F)). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended the referenced Notebooks and Rate Cards so that material accurately reflects the Company's rates on file with the Colorado Division of Insurance. In addition, the Company should be required to demonstrate that it has adopted and implemented procedures which will assure the accuracy of any information or material promulgated by the Company with the intent for public dissemination.

PERTINENT FACTUAL FINDINGS

for

RATE APPLICATION

RATING SECTION 1

Pertinent Factual Findings for Schedule of
Rates, Fees & Charges

TITLE INSURANCE POLICIES.

Issue I: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.

Section 10-4-401, C.R.S., provides:

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403, C.R.S., provides:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(K), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.

Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings

must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

BASIC SUBDIVIDER RATE:

The Company's 1994 base rate manual effective during the period under examination contained the following volume discount for developers and contractors:

BASIC SUBDIVISION RATE

50% of the basic schedule of rates.

For the Counties of Adams, Arapahoe, Denver, Douglas, Eagle and Jefferson, see Title 2. Page 6.

NOTE: The basic subdivision rate is to a developer, contractor or subdivider of a specific project on land within a subdivision, tract or governmental section which has been divided or is to be divided into two (2) or more lots or units of occupancy, all of which are being developed for the sale or lease as separate individual units.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 7, Section 7.1 at p. 36(ed. effective 9/1/94).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the Company was asked to produce a prospective justification of the subdivider rate in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the Company's subdivider discount rate did not contain a sufficient justification of the subdivider rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically,

the Company's response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of builder/developer subdivider discount rates.

ADDITIONAL CHARGES FOR DUPLICATE POLICIES:

The Company's 1994 base rate manual effective during the period under examination contained the following fee the Company charged whenever an insured requested a duplicate, replacement or a copy of the insured's title policy:

DUPLICATE POLICIES

Duplicate policies in which no additional insurance is given may be furnished to the insured at the discretion of the issuing company for a service charge of \$35.00 each. The duplicate policy must contain a statement: 'This policy is issued in lieu of lost policy _____ which is hereby cancelled.'

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 3, Section 3.14 at p. 25(ed. effective 9/1/94).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the examiners requested Company representatives to provide a prospective justification of the charge in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the duplicate policy charge did not contain a sufficient justification of the cited rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the cited rate.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR CONCURRENT LENDER POLICIES.

The Company's rate filing s effective during the period under examination stated that the premium charge for the simultaneous issue of lender's policy when such coverage was issued in conjunction with a qualifying owner's policy was a flat rate of \$100.00 in 52 Colorado

Counties². See Section A, Article 5.1, SIMULTANEOUS ISSUANCE OF LENDER'S POLICY, Rate Filing effective 4/10/97. Notwithstanding the fact that the Company had a filed lender's simultaneous issue rate of \$100.00 effective in almost every Colorado county, the filed rate for the simultaneous issue of a lender's policy in Mesa County Colorado was \$75.00 during the period under examination.

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county fluctuation of concurrent lender policy premium rates was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the county-by-county rate variation for simultaneous issue rates.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR SHORT TERM RE-ISSUE RATES:

During the period under examination the Company's filed rates contemplated a "short term reissue" discount for all title insurance policies issued by the Company within a fixed period of prior coverage. Although the Company's short term re-issue rate was available throughout Colorado, the term of eligibility and discount percentage varied by county. Specifically, the Company's rate manual rule provided:

When a policy is ordered within two years of the effective date of a prior policy, charge will be 50% of the amount set forth in the basic schedule of rates. A copy of the prior policy or other reasonable evidence of its existence must be retained in the issuing agent's file. The 50% rate is to be based on the dollar amount of the prior policy with any additional amount to be computed at the basic schedule of rates. If the policy to be issued has a lesser liability than the

² The 52 counties included -Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffe, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Delores, Delta, Denver, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, and Washington.

prior policy, the short term rate will be calculated at the applicable percentage of the basic schedule of rates based upon the liability of the policy to be issued.

For the counties of Adams, Arapahoe, Boulder, Denver, Douglas, Eagle, Jefferson, Larimer, Mesa, and Weld, a policy ordered within two (2) years of the effective date of the prior policy will be 50% of the amount set forth in the basic schedule of rates as set out above. From two (2) years to three (3) years of the effective date of a prior policy, the charge will be 75% of the basic schedule of rates.

For the counties of Boulder, Larimer, and Weld, from four 4-5 years of the effective date of a prior policy the charge will be 90% of the basic schedule of rates.

For the county of El Paso, a policy ordered within 5 years of the effective date of a prior policy will be charged at 55% of the basic rate in effect at the time the order is placed based on the liability of the policy to be issued.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 8, Section 8.10 at p. 39(ed. effective 9/1/94).

In addition to the above, a short term reissue rate was available in Garfield and Rio Blanco county during the period under examination. In Garfield County the filed rate stated:

When an owner's, lender's or leasehold policy is ordered within three years of the original policy date of a prior owner's, loan or leasehold policy, the charge will be 50% of the amount set forth in the basic schedule of rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the basic schedule of rates in the applicable brackets, provided the prior policy, or a copy thereof, is presented to the Company prior to the issuance of a commitment. A copy of the prior policy must be maintained in the Company's files.

Commonwealth Land Title Insurance Company, 1997 FILING FOR GARFIELD COUNTY (ed. effective 4/10/97).

In Rio Blanco County the filed rate stated:

When an owner's, lender's or leasehold policy is ordered within two years of the original policy date of a prior owner's, loan or leasehold policy, the charge will be 50% of the amount set forth in the basic schedule of rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the basic schedule of rates in the

applicable brackets, provided the prior policy, or a copy thereof, is presented to the Company prior to the issuance of a commitment. A copy of the prior policy must be maintained in the Company's files.

Commonwealth Land Title Insurance Company, 1997 FILING FOR GARFIELD COUNTY (ed. effective 4/10/97).

The examiners requested Company representatives to identify the increased risk factors associated with lender's concurrent coverage in those Colorado Counties where the reissue discount factor was less than 50% and where such discount was not available at 50% for the five year term available in some Colorado Counties. The examiners requested the Company's response to include sufficient financial and statistical data to demonstrate the above cited rate and rating rule was not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county variation of the re-issue discount was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county rate variation.

COUNTY-BY-COUNTY RATE FLUCTUATIONS - SURCHARGE FOR ALTA 1979 POLICIES :

The Company's 1994 Base Rate Manual effective in Colorado during the period under examination contained the following rates and/or rating rules pertaining to the premium charges associated with the issuance of the ALTA 1979 Plain Language Policy:

RESIDENTIAL TITLE INSURANCE POLICY – 1979 (Plain Language Policy)

This policy is to be used for 1-4 family residences only. The charge will be \$35.00 over the basic schedule of rates. For the counties of Adams, Arapahoe, Denver, Douglas, Eagle, El Paso, and Jefferson, the charge will be \$50.00 over the basic schedule of rates.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 4, Section 4.3 at p. 26(ed. effective 9/1/94).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data

demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the examiners requested Company representatives to provide a prospective justification of the cited variation in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county rate differential did not contain a sufficient justification of the cited rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the cited rate.

COUNTY-BY-COUNTY RATE FLUCTUATIONS - OEC POLICIES:

The Company's 1994 Base Rate Manual effective in Colorado during the period under examination contained the following rates and/or rating rules pertaining to the premium charges associated with the issuance of the Owner's Extended Coverage (OEC) Policies:

ALTA RESIDENTIAL TITLE INSURANCE POLICY - 1987 Extended Coverage

Policy is to be used for 1-4 family residences only. Charge will be 100% of the basic schedule of rates plus a \$50.00 surcharge. For the counties of Boulder, Larimer and Weld the surcharge will be \$75.00.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 4, Section 4.3 at p. 26(ed. effective 9/1/94).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the examiners requested Company representatives to provide a prospective justification of the cited county-by-county variation in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the cited county-by-county rate differential did not contain a sufficient justification of the cited rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the

Company's response did not contain pertinent supporting financial or statistical data. In addition, the response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the cited rate.

COUNTY-BY-COUNTY RATE FLUCTUATIONS; GENERALLY.

In addition to the Company rating rules discussed above, a review of statewide rate filings made by the Company and or its Colorado agents, raised certain questions regarding whether the Company's statewide rating scheme complied with the requirements of Colorado law. Specifically, the examiners questioned whether variances in rate charges among different Colorado counties was unfairly discriminatory under Colorado law or whether the county-by-county rating scheme in the business of title insurance resulted in excessive rates.

For instance, the Company's rate filings effective during the period under examination for Boulder and Denver County resulted in different rates charged in each county. The premium charges for a basic ALTA owner's policy in Denver County were \$735.00 on a 100,000 home, or \$7.35 per thousand. Each additional thousand dollars of coverage over and above 100,000 and less than \$500,000 carried an additional premium charge of \$1.85 per thousand.

The premium charges for the same coverage in Boulder County were \$565.00 on a 100,000 home, or \$5.65 per thousand. Unlike Denver County, each additional thousand dollars of coverage over and above the 100,000 but less than \$1,000,000 carried an additional premium charge of \$1.90 per thousand.

The examiners requested the Company to identify factors supporting disparate premium charges among several Colorado Counties. The Company was informed that its response should be a detailed answer describing past and prospective loss and expense experience. The Company was also asked to demonstrate how a reasonable profit provision is incorporated into the Company's premium charges for title coverage, specifically indicating how the Company's investment income offsets the reasonable profit provision.

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rates and rating rules were not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county rate fluctuations was not sufficient justification of the cited rates and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not

contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of county-by-county rate fluctuations.

VARIOUS ENTITY SPECIFIC DISCOUNTS:

Although not contained in the Company's rate manual or filed with the Colorado Division of Insurance, the Company made the following employee discount rate available in Colorado during the period under examination:

FREE TITLE INSURANCE POLICY

LandAmerica provides title insurance services (limited to policy, escrow fees, and search and exam fees) to its full-time employees without charge at the time of purchase or refinance of personal residences. You may receive free title insurance one time during any twelve month period. Under current tax regulations, a portion of this benefit may be subject to taxation.

LandAmerica Financial Group, Inc., Memorandum from the Department of Law & Employee Relations (effective 11/23/99).

The Company's rating manual contained the following regarding a governmental entity discount:

GOVERNMENTAL CONTRACTS

Separate contracts may be entered into with governmental, state, municipal and/or affiliated agencies for furnishing of guarantees or policies of title insurance for such charges as may be agreed upon by and between the governmental entity and the agency.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 8, Section 8.5 at p. 38(ed. effective 9/1/94).

The Company's rating manual contained the following discount for eleemosynary institutions and churches:

The Company's rating manual contained the following regarding reduced premium charges for eleemosynary entities:

NON-PROFIT RATE

For the Counties of Adams, Arapahoe, Denver, Douglas, Eagle and Jefferson, a charge of 50% of the basic schedule of rates may be charged as to owner's and/or lender's insurance properly paid for by insured churches, charitable or like eleemosynary non-profit organizations on property dedicated to church or charitable use within the normal activities for which such entities were intended.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 7, Section 7.4 at p. 36(ed. effective 9/1/94).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1998 and 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rates and rating rules were not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

The Company's response to the examiners' request for statistical and financial justification of the three cited entity specific discounts were not sufficient justifications of the cited rates and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited entity specific discounts.

Recommendation #9:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(K) as applicable to the findings addressed in the text above. In the event the Company is unable to provide such documentation, it should be required to provide the Colorado Division of Insurance with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Company premium rates, fees, and charges. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Company's premium rates, fees and charges.

In addition, the Company should be required to provide written assurance that it will comply with the requirements of 3 CCR 702-3(3-5-1)(VII)(K) and submit an annual filing to the Colorado Division of Insurance of sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401, C.R.S. et seq.

Issue J: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.

Section 10-4-401(3), C.R.S., provides:

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .

. . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same

county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .

. . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .

. . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

Item number four (4) of the Colorado Division of Insurance's Company Checklist of Examination Requirements requested the Company to:

4. Prepare a specimen of each policy and endorsement forms in use during the examination period; include samples of manuscripted endorsements when

applicable. Prepare a copy of all title insurance rate filings applicable to the period under examination and stamped by the Colorado Division of Insurance. Provide a schedule of fees and charges for closing and settlement services, which has been stamped by the Colorado Division of Insurance.

In accordance with the Division's request, the Company prepared a specimen of each rate submission made to the Colorado Division of Insurance for rates effective during the period of examination.

Review of the Company's rate submissions demonstrated that the Company was not in compliance with Colorado Insurance laws regarding rate filing requirements for type II insurers. Specifically, although the rate submissions produced by the Company contained the Colorado Division of Insurance's "RECEIVED" stamp which evidenced the rates were submitted to the Division 30 days prior to the intended effective date, none of the filings bore the Colorado Division's "FILED" stamp indicating the rates were filed and not returned to the Company by the Colorado Division of Insurance as incomplete.

Using the rate submissions discussed above as a baseline, the following sample demonstrated that, in some instances during the period under examination, the Company failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance:

TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	91	91%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 91 exceptions (91% of the sample) wherein the Company issued title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 91%, however the 100 files reviewed contained a total of 165 premium rating errors. The following chart contains a breakdown of the findings by coverage:

Type of Coverage	Number of Errors	% to Sample (file errors)	Range of Errors
Owner's	34 errors (34 files)	34%	Over: \$ 2.00 to \$300.00 (23 errors) Under: \$3.00 to \$728.50 (12 errors)
Lender's	69 errors (69 files)	69%	Over: \$2.00 to \$282.00 (33 errors) Under: \$1.50 to \$398.00 (36 errors)
Endorsements	62 errors (42 files)	42%	Over: \$2.11 to \$75.00 (36 errors) Under: \$10.20 to \$151.58 (26 errors)
Total	165 errors* (91 files)	91%*	Over: \$2.00 to \$300.00 (92 errors) Under: \$1.50 to \$728.50 (73 errors)

* Totals for files and percentages consider counting a file with multiple errors as a single exception.

** Range of error does not include rounding errors.

In eight (8) instances the Company misapplied its short-term re-issue premium discount, failing to allow the discount to eligible applicants and/or allowing the discount to ineligible applicants. Specifically, during the period under examination the Company's rating manual provided:

When a policy is ordered within two years of the effective date of a prior policy, charge will be 50% of the amount set forth in the basic schedule of rates. A copy of the prior policy or other reasonable evidence of its existence must be retained in the issuing agent's file. The 50% rate is to be based on the dollar amount of the prior policy with any additional amount to be computed at the basic schedule of rates. If the policy to be issued has a lesser liability than the prior policy, the short term rate will be calculated at the applicable percentage of the basic schedule of rates based upon the liability of the policy to be issued.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 8, Section 8.10 at p. 39(ed. effective 9/1/94).

In six (6) of the eight (8) instances in which the company misapplied the reissue discount, the Company failed to allow the discount to eligible applicants resulting in overcharges ranging between \$52.00 and \$299.40. In another instance the Company applied the short-term reissue discount against the premium charges of a policy issued to a commercial lender. However, the file did not contain "reasonable evidence" of the existence of prior coverage in compliance with the Company's short-term reissue rate rule cited above which demonstrated the insured was not eligible for the discount. In this instance the lender was undercharged \$317.00. In the eighth instance in which the Company misapplied its short-term reissue rate, the Company calculated

the reissue discount at 50% of the base rate for the policy being issued instead of calculating the discount at 50% of base rate for the amount of prior coverage in compliance with the rating rule resulting in a \$54.35 undercharge.

Eleven (11) errors were rounding errors in which the Company rounded premium charges without the benefit of a filed rating rule. The Company's schedule of rates for some counties in Colorado displayed rate charges to the nearest penny, however, in these 11 instances the Company rounded the premium to the nearest whole dollar. Furthermore, the Company did not always round in accordance with general rounding principles. In three (3) instances the Company rounded premium charges up when, in accordance with normal rounding principles, the premiums should have been rounded down. For example, in one instance the Company rounded \$.10 up to the next whole dollar. In another instance the Company rounded the premium charges down to the nearest whole dollar from a remainder of \$.90

In three (3) of the 165 reported instances, the Company charged additional premium charges for increases in liability assumed under concurrent lender's policies issued to provide title coverage in coordination with loans exceeding the purchase price of the subject property. The Company, however, did not have a filed rate which contemplated charging for the additional coverage or which provided a formula for calculating the additional premium charges in such cases. These errors resulted in overcharges of \$2.00, \$15.00, and \$31.00.

In another seven (7) of the 165 reported instances, the Company failed to allow the Company's refinance discount to eligible applicants. Specifically, during the period under examination the Company's rating manual provided:

LOAN POLICY ISSUED FOR REVAMPING OR
REPLACING AN INSURED DEED OF TRUST

When a policy has been issued insuring the lien of a mortgage, deed of trust or other security instrument, and within 5 years of the recordation of the original mortgage, deed of trust or other security instrument, a substitution loan is made to the same borrower secured by the same premises, the charge shall be 50% of the amount set forth in the basic schedule of rates for that portion of the new loan which represents the unpaid balance of the prior loan. A policy issued in the 6th year will have a 40% charge. The charge for that portion of the new loan shall be computed in accordance with the charge set forth in the basic schedule of rates in the applicable bracket or brackets. The percentage reduction does not apply to deletion and/or additional coverage endorsements unless they were issued in connection with the original policy.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 5, Section 5.9 at p. 32(ed. effective 9/1/94).

In five (5) of the seven (7) instances in which the company misapplied the refinance discount, the Company failed to allow the discount to eligible applicants resulting in overcharges ranging between \$97.18 and \$282.00. In two other instance in which the Company misapplied its refinance rate, the Company calculated the refinance discount at 50% of the base rate of the current premium charges instead of limiting the 50% discount to the premium charges for that portion of the new loan representing the unpaid balance of the prior loan. The Company's failure to comply with the requirements of the refinance rule in these two instances resulted in undercharges of \$152.65 and \$84.00.

The remaining 136 errors were rate miscalculation errors resulting in an additional 72 overcharges ranging between \$2.00 and \$300.00 and 64 undercharges ranging between \$1.50 and 728.50.

In addition, the initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1998 to June 30, 1999. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's rating practices in regards to these limited liability policies were as follows:

**LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
460	50	6	12%

An examination of 50 systematically selected underwriting files, representing 11% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 6 exceptions (12% of the sample) wherein the Company issued limited liability title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance.

Specifically, during the period under examination the Company had a filed flat rate of \$125.00 for limited liability loan policies issued in Colorado. In four (4) of the six exceptions the Company charged \$150.00 to issue each policy resulting in four (4) overcharges of \$25.00 each.

In the remaining two (2) exceptions the Company only charged \$100.00 resulting in two (2) undercharges of \$25.00.

Recommendation #10:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide assurances that all future policies will be issued in accordance with filed company rates and all premium charges will accurately reflect rates on file with the Colorado Division of Insurance.

In addition, the Company should be required to file a rounding rule and provide written assurances that the rule will be distributed to Company examiners and other individuals responsible for and involved in the process of calculating or determining premium charges to assure that the rule will be implemented and followed. Such filing should be submitted to appropriate individuals within the rates and forms section of the Colorado Division of Insurance with a “FILED” stamped copy subsequently forwarded to the market conduct section.

The Company should also be required to perform a self-audit from June 1, 1998 to present and return any excess monies collected as determined by the self-audit. The self-audit should be performed in accordance with Colorado guidelines for self-audits.

Finally, the Company should be required to review its procedures pertaining to rate submissions and filings and produce evidence demonstrating that the Company has reviewed and amended those procedures to assure the Company will retain copies of Company rates bearing the Colorado Division of Insurance’s “FILED” stamp as evidence that the subject rate or rates were filed in compliance with the requirements of §10-3-401 et seq., C.R.S.

Issue K: Engaging in unfairly discriminatory rating practices and adopting rate rules and/or premium charges that are excessive, unfairly discriminatory and/or adopting rating rules or premium charges that improperly favor producers of title insurance business.

Section 10-3-1104(l)(f), C.R.S., defines an unfair method of competition or deceptive act or practice in the business of insurance as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403, C.R.S., provides:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

UNFAIRLY DISCRIMINATORY RATING PRACTICES-FAILING TO OFFER AND/OR PROVIDE QUALIFIED APPLICANTS WITH FILED COMPANY BUNDLED LOAN PREMIUM DISCOUNT:

Notwithstanding the discussion under Issue J above regarding premium discount errors, the Company's 1997 rate filing, effective throughout Colorado during the period under examination, contained the following premium discount rule:

Streamline (Bundled) Loan and Endorsement Package

When a loan policy is issued insuring a loan which is replacing or revamping a deed of trust within a prior 10 year period; the policy may be issued for 50% of the basic schedule of rates. An endorsement package including compressive endorsement form 100, form 8.1, and either form 115.1 or 115.2 issued in conjunction with a policy insuring such revamping or replacement loans may be issued at a charge of \$50.00

Commonwealth Land Title Insurance Company, 1997 RATE FILING, (ed. effective 4/10/97).

Although the streamline bundled loan discount was filed to be effective in all Colorado counties, aside from the Company's Denver metro area schedule of rates, the rate did not appear in any schedule of rates prepared by the Company for public dissemination in accordance with the requirements of 3 CCR 702-3(3-5-1(IV)). The Company's failure to include the rate in the Company's various schedules of rates composed and distributed to the public with the intent to comply with the requirements of Colorado law demonstrated the rate, though available state wide, was not publicized or offered outside the Denver metro area. In addition, a review of the

following sample demonstrated the Company failed to honor the discount when issuing qualifying title policies:

TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	39	39%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination, showed 39 exceptions (39% of the sample) wherein the Company issued title insurance policies and endorsements and failed to offer and/or provide the streamline bundled loan discount to qualified applicants for title insurance coverage.

The 39 policies reported here were eligible for the cited discount, however, the files did not reflect the discount was ever offered or provided. The end result was that the policies should have been issued at a significant reduction in premium resulting in overcharges ranging between \$4.50 and \$430.00. The range is somewhat misleading in that the premium for the policy issued to the insured that was overcharged \$4.50 was calculated using other discount factors. The average overcharge in the 39 reported policies was \$123.34 with a medium overcharge of \$217.25.

In addition to the premium discount, according to the Company's filing each policy should have been issued with endorsements 100, 8.1, and either form 115.1 or 115.2 at an additional charge of \$50.00. Instead, 28 of the 39 policies were issued with endorsements 100 and 8.1 for a full premium charge totaling \$70 resulting in an additional \$20.00 overcharge per policy. Furthermore, the Company's failure to issue the form 115.1 or 115.2 endorsement with the policy and charging full premium for the form 100 and 8.1 endorsements resulted in insureds paying higher premium charges for less coverage.

Eight (8) of the 39 policies were issued with endorsements 100, 8.1, and 115.2, however, the endorsement were not issued at the \$50.00 bundled rate. Instead, each endorsement was issued at 100% of the filed rate with combined charges ranging between \$70.00 and \$195.00. After factoring in the \$50.00 bundled charge for the endorsement package, this practice resulted in additional per policy overcharges ranging between \$20.00 and \$175.00.

Three (3) of the policies were issued with no endorsements reducing the premium overcharge by \$50.00 but also resulting in a reduction in coverage

PERMISSIVE RULE REGARDING MINIMUM PREMIUM CHARGES:

The Company's 1994 Base Rate Manual effective in Colorado during the period under examination contained the following rating rule regarding minimum premium charges:

MINIMUM RATES – ADDITIONAL CHARGE PROVISION

The rates set forth herein are minimum charges. Additional charges can be made when unusual conditions of title are encountered, or when special risks are insured.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 3, Section 3.3 at p. 22(ed. effective 9/1/94).

The cited rating rule contained a permissive element that afforded discretion to the issuing agent. Specifically, the rating rule indicated that additional charges "can" be made when unusual conditions are encountered. The term "can" implies that the issuing agent may, at the agent's discretion, assess additional charges when unusual conditions are encountered.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1)(IV)(D) and (V)(C)) allow title insurers to adopt rating clauses that anticipate unusual risks or unusual circumstances in performing title related services. The regulation, however, states that, provided an insurer adopts such a clause, the clause must indicate that such charges "are" made when unusual conditions are encountered, special services rendered, or unusual risks are insured. The fact that the Company's rule is permissive, combined with the fact that no guidelines are provided for determining such charges, indicate the rating rule is discriminatory as written. Specifically, discretionary rating rules allow disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violates Colorado anti-discrimination statutes.

DISCRETIONARY RATING RULE REGARDING VALUATION OF LEASEHOLD POLICIES:

The Company's 1994 Base Rate Manual effective in Colorado during the period under examination contained the following rating rule regarding valuation of leasehold policies:

RATE FOR LEASEHOLD POLICIES

Charges may be computed on either the full value of the land and existing improvements or on the lesser amount relating to the term of the lease as follows:

- (1) less than 25 years – 10 times the annual rental

- (2) 25 years or more but less than 50 years – 20 times the annual rental.
- (3) 50 years or more – the full value of the land and existing improvements
- (4) Insurance in excess of the minimum amount may be issued at the appropriate insurance rate.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 6, Section 6.1 at p. 34(ed. effective 9/1/94).

The cited rating rule contained a permissive element which stated that the minimum charges “may be computed on either the full value of the land and existing improvements or on a lesser amount related to the term of the lease.” The rule afforded Company agents the opportunity to manipulate premium charges by determining the value of the policy. Permissive, discretionary rating rules that allow for potential disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged violate Colorado anti-discrimination statutes.

DISCRETIONARY INSPECTION CHARGE

The Company’s 1994 Base Rate Manual, effective during the period under examination, contained the following rate variations regarding inspection charges:

INSPECTION CHARGE

If the issuance of a commitment or endorsements requires a physical inspection of the property, a minimum charge of \$25.00 is made. If an order is canceled after an inspection has been made, the charge thereof is added to the fee for cancellation of the order.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 8, Section 8.4 at p. 28(ed. effective 9/1/94).

The cited rule stated that the \$25.00 inspection charge is a “minimum” charge, however, the rule failed to identify or establish any articulable standards for determining additional charges. The absence of ancillary guidelines for determining additional charges rendered the rule ambiguous. Without additional guidelines for determining additional charges, any inspection charge assessed over the filed rate of \$25.00 was left to the discretion of the issuing agent. Discretionary rating rules allow for potential disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violates Colorado anti-discrimination statutes.

DISCRETIONARY RULE PERTAINING TO REFUND OF COMMITMENT CANCELLATION CHARGES:

CREDIT FOR CANCELLATION CHARGES ON COMMITMENT

Where no substantial change in the title has occurred subsequent to the original commitment, the order may be reopened and all or a portion of the cancellation charge for the commitment may be credited on a subsequent policy charge within the following time periods from the date of the commitment:

- (a) Within 12 months: 100% credit of the cancellation charge toward the policy charge.
- (b) Over 12 but within 24 months: 50% credit of the cancellation charge toward the policy charge.
- (c) Over 24 months: No credit for the cancellation charge.

Commonwealth Land Title Insurance Company, 1994 BASE RATE FILING, Title 3, Section 3.14 at pp. 24-25(ed. effective 9/1/94).

The cited rating rule contained a permissive element which stated that, at the discretion of the issuing agent, “where no substantial change in the title has occurred subsequent to the original commitment, an order may be reopened and all or a portion of the cancellation charge for the original commitment may be credited on a subsequent policy” within certain time periods. Aside from the time periods during which the percentage of the amount refunded is reduced over time, no guidelines were provided for determining when an agent must refund or credit such charges.

MISCELLANEOUS DISCRETIONARY RATES AND/OR RATING RULES:

The Company’s filed rates during the period of examination, July 1, 1998 to June 30,1999, contained the following rates/rating rules which included a permissive element. Moreover, the following rating rules did not include clear articulable standards or guidelines regarding when and under what circumstances an agent was to apply the rate and/or what rate the agent was to apply:

Territory (County)	Effective Date	Rate/Rating Rule
Mesa	9/9/96	Endorsement 116-Minimum charge of \$50.00 with no articulable standards for determining additional charges.
Rio Blanco	4/10/97	Premium Charge for Foreclosure Guarantee for limits of liability over \$300,000-Range of \$300 to \$500 with no articulable standards for determining premium charges within the range.

TERRITORY (County)	EFFECTIVE DATE	RATING RULE
Rio Blanco	4/10/97	Endorsement 116-Minim charge of \$50.00 with no articulable standards for determining additional charges.
Garfield	4/10/97	Premium Charge for Foreclosure Guarantee for limits of liability over \$300,000-Range of \$300 to \$500 with no articulable standards for determining premium charges within the range.
Garfield	4/10/97	Endorsement 116-Minim charge of \$50.00 with no articulable standards for determining additional charges.
Boulder	5/22/96	Endorsement 116-Minim charge of \$50.00 with no articulable standards for determining additional charges.
El Paso	2/1/97	Nonresidential Closing & Settlement Services- Range of \$100 to \$1000 with no articulable standards for determining fees and charges within the range.
El Paso	2/1/97	Premium Charge for Foreclosure Guarantee for limits of liability over \$300,000-Range of \$300 to \$500 with no articulable standards for determining premium charges within the range.
El Paso	2/1/97	Endorsement 116-Minim charge of \$50.00 with no articulable standards for determining additional charges.
Multi County	4/10/97	Premium Charge for Foreclosure Guarantee for limits of liability over \$300,000-Range of \$300 to \$500 with no articulable standards for determining premium charges within the range.
Multi County	4/10/97	Streamline Bundled Loan & Endorsement Package-rule indicates issuing agent may issue a policy at the cited discount rate. If the applicant is eligible for the discount rate, the agent should be required to provide the discount.
Multi County	4/10/97	Nonresidential Closing & Settlement Services- Range of \$100 to \$1000 with no articulable standards for determining fees and charges within the range.

The cited rates/rating rules contained a permissive element that left application and/or interpretation of the rate or rule to the discretion of the issuing agent. No guidelines or articulable standards were provided for determining charges that exceeded the minimums, fell below the maximums, or were within the ranges identified above. Ambiguous, discretionary rating rules allow disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violate Colorado anti-discrimination statutes.

Recommendation #11:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(f)(II) and 10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VI)(A) and (B). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has amended its Colorado Agency Manual and withdrawn any other filed rates and/or rating rules so that the material excludes any excessive or unfairly discriminatory rates.

Issue L: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.
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Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:
 - b. The application for each policy, if any;
 - c. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
 - d. Other information necessary for reconstruction of the rating and underwriting of the policy.

TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	5	5%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination showed 5 exceptions (5% of the sample) wherein the Company failed to adequately document underwriting/rating files sufficient to allow the examiners to determine compliance with Colorado law.

Four (4) of the 5 files were not sufficiently documented to allow the examiners to reconstruct premium rates charged and/or to determine whether the Company was in compliance with or followed its own rating rules and/or underwriting guidelines when applying certain rate discounts.

Three (3) of the 5 files did not contain copies of the underlying policies issued.

Recommendation #12:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance to ensure future compliance with the regulation.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its record keeping and file maintenance practices and implemented procedures which will assure underwriting files will be maintained so each file contains declaration pages, endorsements, riders, guidelines or manuals associated with or used for the rating or underwriting title policies, and any other information necessary for reconstruction of the rating and underwriting of the policy.

RATING SECTION 2

Pertinent Factual Findings for Schedule of
Rates, Fees & Charges

CLOSING & SETTLEMENT SERVICES.

Issue M: Failing to file a schedule of fees and charges for closing and settlement services with the Colorado Division of Insurance and/or using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.

Section 10-4-401(3), C.R.S. provides:

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .

. . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others

for the same type of title policy in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .

. . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .

. . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

Upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. In response to that request, the Company produced three notebooks containing rates and rating rules for agencies

located in eight (8) Colorado Counties (Boulder, Adams, Arapahoe, Denver, Douglas, Jefferson, Larimer, and Weld). These notebooks were produced with the intent and in a fashion suitable for public dissemination in compliance with the statutes and regulations cited above. The notebooks also contained copies of abbreviated rate cards made available to the public as a quick reference to Company rates and charges in the respective county.

Close review of the notebooks disclosed that the Company was not be in compliance with Colorado law. Specifically, the schedule of fees and charges for closing and settlement services set forth in the Rate Cards contained a list of certain ancillary charges, however, non of the charges or fees were filed with the Colorado Division of Insurance.

The most comprehensive list of ancillary fees was a list of charges assessed for closings conducted in El Paso County. These ancillary charges were as follows:

Ancillary Fees:

Tax Information Services (including county certification)	\$18.00
Overnight Courier Services	\$22.00 per Package
Release Facilitation	\$21.00 per Release
Wire Transfer Facilitation	\$15.00
Holding Escrow Fee	\$250.00
Document Preparation	\$5.00
Special Check Service	\$5.00
Disbursement Fee – in excess of 4 checks	\$10.00 each

Commonwealth Land Title Insurance Company, RATE AND SETTLEMENT CHARGES FOR EL PASO COUNTY. P.1, (ed. 1/1/97).

Failure to file the above listed charges and fees is in violation of the cited statutes and regulations.

In addition, the following sample demonstrated that the Company conducted closing and settlement services in Colorado during the period under examination and collected unfiled rates,

fees, and charges for such services and/or deviated from the filed rate when calculating or assessing such charges:

TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
25,183	100	80	80%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .40% of all title policies issued by the Company in Colorado during the period under examination showed 80 exceptions (80% of the sample) wherein the Company conducted real estate closing and settlement services in coordination with the issuance of title insurance policies and collected fees and charges for the closing and settlement services which deviated from the Company's closing and settlement services fee schedule filed with the Colorado Division of Insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 80%, however the 100 files reviewed contained a total of 267 closing and settlement rating errors. All rating errors fell into specific sub-categories of closing and settlement fees and charges as discussed and outlined below.

OVERCHARGES FOR MISCELLANEOUS FEES ASSOCIATED WITH
CLOSINGS PERFORMED BY THE COMPANY'S AGENT

Misapplication of Express Fee Charges

In 74 of the 95 reported files (74% of the sample), the Company collected monies from insureds for express mail and/or courier charges. Further review of Company files and the Company's unfiled ancillary fee schedules demonstrated that, whenever a closing required an express mailing, the Company's practice was to charge a flat fee for the charges incurred. The Company's flat fee for express mailings ranged from \$15.00 to \$22.00.

As indicated above, none of the Company's rates on file with the Colorado Division of Insurance anticipate or provide for any additional charges or fees over and above the actual costs incurred for any express mailing conducted in association with express delivery charges. Since the actual charges incurred in relation to these mailing charges was not documented in any of the files reported here, a range of error in over or undercharges was not discernable.

Tax Certificate Charges

Eighty (80) of the 95 reported files (80% of the sample) contained overcharges related to tax certificates obtained by the Company prior to issuing title policies as required by §10-11-122, C.R.S. and on behalf of insureds in conjunction with closing services performed by the closing

entity. Specifically, a review of 100 underwriting files demonstrated that, during the period under examination, the Company had a practice of charging a flat rate for tax certificates obtained in compliance with §10-11-122, C.R.S. and in conjunction with closings services regardless of the actual cost incurred in obtaining the tax certificate. The practice of charging a flat rate for tax certificates (flat rate fees ranged between \$15.00 and \$30.00) generally resulted in the Company charging excess funds for tax certificates obtained. Since the Company failed to file any flat rate for tax certificates with the Colorado Division of Insurance, any monies collected in excess of the actual cost of obtaining the tax certificates resulted in the collection of an unfiled fee and application of an unfiled rate. The 80 errors resulted in overcharges ranging between \$5.00 and \$30.00 on a per file basis.

The initial list of policies issued by the Company in Colorado during the period under examination did not include limited liability title insurance policies issued by the Company during the examination period. Based on this information, the examiners requested the Company to provide a list of limited liability policies issued by the Company from July 1, 1998 to June 30, 1999. The examiners systematically selected 50 limited liability policies from that list for further review. The examiners' findings pertinent to the Company's practice of charging an unfiled flat rate for tax certificates obtained in compliance with §10-11-122, C.R.S. and in conjunction with closings services were as follows:

**LIMITED LIABILITY TITLE POLICIES ISSUED
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
460	50	18	36%

An examination of 50 systematically selected underwriting files, representing 11% of all limited liability title policies issued by the Company in Colorado during the period under examination, showed 18 exceptions (36% of the sample) wherein the Company obtained tax certificates for insureds and collected unfiled fees and/or unfiled charges for services rendered in coordination with obtaining said tax certificates.

Specifically, as in the case of other underwriting and escrow files, a review of the 50 underwriting files for the limited liability policies demonstrated that, during the period under examination, the Company charged a flat rate for services rendered in coordination with obtained tax certificates. The Company failed to file the flat rate tax certificate charge with the Colorado Division of Insurance. Fourteen (14) of the 16 files contained overcharges ranging between \$5.00 and \$10.00 on a per file basis. In two (2) other files the Company failed to assess and/or collect charges for tax certificates obtained, however, the Company incurred a \$10.00 expense in each case. The Company does not have a rate filing supporting waiver of tax certificate charges.

Overcharges of Miscellaneous Fees Associated with Closings

Sixteen (16) of the 80 reported files (16% of the sample) contained overcharges made by the Company and/or its agents for miscellaneous expenses incurred in conducting closings. Such expenses included wire fees, document preparation charges, and cashier's check charges. As in the case of express mail and recording charges discussed above, many of the overcharges resulted from the Company and/or its agents charging flat rates to defray the costs of such services. Since the Company or its agents failed to file any flat rates to cover these miscellaneous expenses, all monies collected in excess of the actual cost of performing or obtaining such goods or services resulted in the collection of unfiled fees and application or use of unfiled rates. The 16 errors resulted in overcharges ranging between \$5.00 and \$350.00.

OVERCHARGES & MISCALCULATIONS OF FILED CLOSING FEES

Seventy-six (76) of the 80 reported files (76% of the sample) contained rating errors³ in which the Company agents deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which Company agents made charges for basic closing fees that deviated from the Company or its agent's filed fee schedule. The 76 files contained a total of 97 errors resulted in overcharges ranging between \$10.00 and \$130.00 and undercharges ranging between \$10.00 and \$75.00.⁴

Thirty (30) of the 76 files contained rating errors for charges associated with real estate closings. Of these 30 files, 29 files contained rating errors resulting in overcharges ranging between \$10.00 and \$115.00. One (1) of the 30 files contained a rating error that resulted in a \$70.00 undercharge.

Sixty-seven (67) of the 76 files contained rating errors for charges associated with lender closings. Of these 67 files, 57 files contained rating errors resulting in overcharges ranging between \$45.00 and \$130.00. Ten (10) of the 76 files contained rating errors resulted in undercharges ranging between \$10.00 and 75.00.

Recommendation #13:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating

³ Many of the 76 files reported here contained rating errors regarding closing fees for both the real estate and lender closing transaction. Where multiple closing fee errors occurred within a file, the file was only reported as a single error.

⁴ The range of error reported here is based on the miscalculation or misapplication of a single closing fee, either real estate or lender. The range does not represent the total monetary error contained in a file with multiple closing fee errors.

to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the law.

PERTINENT FACTUAL FINDINGS

Relating to

CLAIMS SETTLEMENT PRACTICES

Issue N: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.

Section 10-3-1104(1)(h)(III), C.R.S., defines an unfair claims settlement practice as:

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

**TITLE CLAIMS MADE
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	21	42%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed, showed 21 exceptions (42% of the sample) wherein the Company failed to adopt and/or implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Many files reviewed contained more than one error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the exception frequency reported above was 42%, however the 50 claim files reviewed contained a total of 29 errors. As specified by the heading of this issue, the 29 errors fell into two broad categories. One category was comprised of errors resulting from the Company's failure to implement its own claim handling procedures. The second category resulted from the Company's failure to adopt certain rules and/or procedures requisite to facilitate the prompt investigation or handling of claims arising under title insurance policies. Specific findings were as follows.

I. FAILURE TO IMPLEMENT COMPANY STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

FAILING TO OBTAIN POLICY AND/OR COMPLETE AGENT POLICY VERIFICATION CHECKLIST IN COMPLIANCE WITH COMPANY CLAIMS MANUAL:

During the period of examination, July 1, 1998 to June 30, 1999, The Company's Claims Manual contained the following rule:

Without delaying one's handling of the claim, but prior to the closing of the claim file, the claims counsel must obtain a policy copy from NPC (National Processing Center), fill out an Agent Policy Verification Checklist, CLT 3334 Ed. 8/93 (exhibit 27) and distribute the form as designated.

Commonwealth Land Title Insurance Company, CLAIMS MANUAL, p.3 (ed. 9/93).

Notwithstanding the cited requirement, the Company failed to obtain copy of the referenced NPC policy and/or an “Agent Policy Verification Checklist” in 6 of the 50 claim files reviewed and in which the standard applied.

FAILING TO INCLUDE MINIMUM COMPANY STANDARD IN CLAIMS ACKNOWLEDGMENT LETTERS:

A review of the Company’s claims manual effective during the period under examination, July 1, 1998 to June 30,1999, demonstrated that during that period the Company’s claims manual contained specific procedure for acknowledging claims received at the Company’s Claims Department (Home Office). Specifically the manual provided:

Upon receipt of a claim, The Claims Department will send the insured a written acknowledgment noting the date of the insured’s letter, the date it was received, and the name and address of the claim officer to whom the claim has been assigned for processing.

Commonwealth Land Title Insurance Company, CLAIMS MANUAL, p.2 (ed. 9/93).

In 2 of the 50 claim files reviewed the Company failed to comply with the cited provision of the Company’s Claims Manual. Specifically, in 2 of the 50 files reviewed the Company’s letter acknowledging receipt of notice of the claim did not reference either the date the notice letter was received, the date of the insured’s notice letter, and/or did not provide a name and address of a claims officer assigned to the claim.

FAILING TO IMPLEMENT COMPANY RULE REGARDING ADJUSTMENT OF SPECIAL RESERVE CODES:

During the period under examination, July 1, 1998 to June 30,1999, the Company’s claims handling manual contained the following provisions regarding update and adjustment of certain “catch all” loss reserve codes:

Reserve code #5 should be used when the facts or issues of a claim are so difficult to ascertain or evaluate that the customary preliminary investigation is not sufficient to enable the claims officer to intelligently estimate an opening reserve. . . .This reserve **must be adjusted** as soon as sufficient information becomes available.

Commonwealth Land Title Insurance Company, CLAIMS MANUAL, p.9 (ed. 9/93)(emphasis added).

As indicated above, the Company used a general reserve code (reserve code 5) to open claims that required further investigation. Once the Company's claims manager completed his or her preliminary investigation, the claims manager was expected to adjust the reserve code to accurately reflect the nature of the respective claim and any potential losses. Recognizing the fact that a reserve code 5 indicated the Company's Claims manager had not completed his or her initial investigation into the claim, the cited Company claims handling rule required claims managers to complete their respective investigation promptly and adjust the reserve code accordingly.

In 5 of the 50 files reviewed Company claims managers opened claim files and set reserves at \$1.00 with an initial Company reserve code 5. In each reported error the Company claims manager received information regarding valuation of the loss or amount of the respective claim, however, the claims manager failed to promptly complete his or her investigation and/or failed to adjust the reserve in compliance with the Company's Claims Manual.

FAILING TO ADOPT AND/OR IMPLEMENT A "TICKLER" OR OTHER SUCH REMINDER SYSTEM TO FACILITATE PERIODIC REVIEW OF OPEN CLAIM FILES:

During the period under examination the Company's Claims Manual contained the following rules regarding monitoring claims and prompt, timely review and investigation of claims:

Claims officers should review individual claim files at appropriate intervals, prompted by a suspense or tickler system; each file should be organized so that the one reviewing it would be able to readily ascertain the history and status of the claim.

A suspense or tickler system is designed to facilitate file disposition by creating mandatory review dates. This may be accomplished by several methods, the simplest of which is assigning a review date by marking the file number on a calendar under that date. Each day, the file notes should be reviewed. A second but similar method is designed to accommodate a large volume of claims. Each file is represented by an index card filed under an appropriate review date. This method permits easy reassignment of review dates.

Commonwealth Land Title Insurance Company, CLAIMS MANUAL, p.2 (ed. 9/93).

Ten (10) of the 50 claims files reviewed remained open and idle for periods ranging between 95 and 571 days which demonstrated, among other things, the claims manager handling each respective file failed to implement the cited Company rule requiring periodic review of claim files.

FAILURE TO IMPLEMENT COMPANY RULE REQUIRING COMPANY ADJUSTERS TO MONITOR CLAIMS ASSIGNED TO OUTSIDE COUNSEL:

The Company's Claims Manual contained the following rules regarding retention and use of outside counsel:

Claims officers are charged with the responsible of directing and monitoring the activity of outside counsel. . . .

. . . Claims officers must complete the top portion of the COUNSEL RETENTION/EVALUATION FORM CLT-3118 each time counsel is retained and send a photocopy to the Senior Claims Counsel and the claims Department-Philadelphia before or at the time the first draft for attorney fees or related expenses is submitted. . . .

. . . The degree or frequency of contact necessary to maintain control of a claim cannot be generalized. Nevertheless, it is expected that claims officers will clearly define retained counsel's role, discuss litigation strategy and estimate costs at the outset of the time counsel is retained. Unless the size of the case does not justify incurring the expense, the claim officer should request retained counsel to furnish a written analysis of the case (within 30 days of retention) outlining options available to protect the client's interest and move the case promptly to final conclusion. Further, claims officers should maintain a continual dialogue with retained counsel and review the progress of active claims at least monthly.

Commonwealth Land Title Insurance Company, CLAIMS MANUAL, pp. 12 & 13 (ed. 9/93).

In 1 of the 50 claim files reviewed the Company retained outside counsel to assist in handling the claim and subsequently forwarded expenses for fees and related services to the attorney without first obtaining and completing the requisite Counsel Retention/Evaluation Form.

In addition, the absence of any file documentation, periodic updates, and correspondence between the adjuster and outside counsel in this file indicated that the Company's claims manager did not comply with provisions of the Company's Claims Manual cited above which required more active interaction between the adjuster and outside counsel.

II. FAILURE TO ADOPT REASONABLE STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

FAILURE TO ADOPT PROCEDURES TO AVOID DELAYS IN INVESTIGATING CLAIMS CAUSED BY MISDIRECTION OF CLAIM FILES AND/OR POOR RESPONSE TIME BETWEEN CLAIMS OFFICE AND REGIONAL OPERATIONS:

Five (5) of the 50 claim files reviewed by the examiners contained claim handling delays incurred during periods in which claim files were re-assigned or during which regional offices failed to respond to investigative inquiries from the Company's Claims Office. Specifically, in one claim file, after several delays, the claim was reassigned to a different Company claims manager. The new adjuster failed to review or act upon the transferred file for more than 107 days. The Company was unable to identify any Company procedures adopted to trace transferred files and obviate such delays.

Review of another 4 files demonstrated that, in some instances in Colorado during the period under examination, investigation of claims was unnecessarily delayed by misdirection of files and poor communications between the Company's Claims Office located in Seattle, Washington and regional Colorado operations. Specifically, Company claims managers located in Seattle, Washington often rely on information provided by the Company's Denver Research Center in making initial determinations into coverage. Four (4) claims files reviewed by the examiners contained internal processing delays caused by the failure of the Company's Denver Research Center to prioritize and/or timely respond to requests for information submitted by the Company's Claims Office located in Seattle, Washington. These delays resulted in internal claims handling delays and communications between Company operations being ignored for periods ranging between 103 and 121 days.

Recommendation #14:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(III), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed all Company rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all claims will be acknowledged, handled, adjusted, and/or investigated in accordance with Colorado Insurance Laws.

The Company should also be required to review its Claims Manual and current claims handling procedures and amend, reform, and/or update either the manual or procedures so that the Company's Claims Manual is an accurate reflection of current Company claims handling procedures. Any update or amendments of the manual should incorporate and address changes in the Company's claims operation systems, software, and programs pertinent to processing, handling, and documenting claims. Highlighted corrected sections of the Company's Claims Manual should be submitted to the Market Conduct Section of the Colorado Division of Insurance

Issue O: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Section 10-3-1104(1)(h)(II), C.R.S., defines an unfair claims settlement practice as:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

**TITLE CLAIMS MADE
July 1, 1998 through June 30, 1999**

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	9	18%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed 9 exceptions (18% of the sample) wherein the Company failed to acknowledge and/or act reasonably promptly upon communications with respect to claims arising under insurance policies.

The 9 files contained a total of twelve errors. Nine (9) of the errors resulted from the Company's apparent failure to act reasonably promptly upon claims related communications while the remaining 3 errors arose from the Company's failure to timely acknowledge claims related communications. These 12 errors were as follows:

Failing to Provide Timely Acknowledgement of Claims Related Communications:

In one claims file the attorney for a third party claimant wrote the Company a letter requesting reimbursement for attorney's fees. The Company claims manager handling the claim classified the matter as an informal inquiry and failed to respond to the demand letter for more than 331 days.

In another file the Company did not acknowledge receipt of notice of the claim until 56 days after having received the insured's initial notice letter.

In a third file an insured's attorney wrote the Company a letter dated June 29, 1999. The Company received the letter, which requested the Company to intervene in a matter on the insured's behalf, on July 1, 1999. The Company, however, failed to acknowledge the letter until August 20, 1999, 49 days after receipt of the attorney's letter.

Failing to Act Reasonably Promptly Upon Claims Related Communications:

In addition to the above, all 9 reported files contained errors related to the Company's failure to act reasonably promptly upon claims related communications. Specifically, each of the 9 files reported here contained errors wherein the files were not documented to demonstrate the Company promptly initiated an investigation into the respective matter or otherwise acted upon claims related communications within a reasonable period of time after receipt of the respective communication. Claims delays resulting from the Company's apparent failure to act reasonably promptly upon claims related communications ranged between 44 days and 2 ½ years.

Recommendation #15:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(II), C.R.S. In the event the Company is unable to provide such information, it should provide evidence that it has reviewed its procedures relating to the handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all communications with respect to claims arising under insurance policies will be acknowledged and acted upon in accordance with statutory requirements.

Issue P: Failure to produce and/ or maintain adequate claims records for market conduct review.
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Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

C. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

2. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
3. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:
 - a. The application for each policy, if any;
 - e. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
 - f. Other information necessary for reconstruction of the rating and underwriting of the policy.
3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

4. Records relating to the insurer's/carrier's or related entity's compliance with this state's producer licensing requirements shall be maintained, which shall include the licensing records of each agency and producer associated with the insurer or related entity. Licensing records shall be maintained so as to show clearly the dates of the appointment and termination of each producer.
5. The complaint records required to be maintained under Section 10-3-1104, C.R.S. and Regulation 6-2-1.

Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee. Failure to produce and provide a record within a reasonable time frame shall be deemed a violation of this regulation, unless the insurer or related entity can demonstrate that there is a reasonable justification for that delay.

TITLE CLAIMS MADE
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	15	30%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed 15 exceptions (30% of the sample) wherein the Company failed to adequately document claim files sufficient to allow the examiners to determine compliance with Colorado law. Specifically, in these 15 exceptions claims files were not adequately documented to clearly show the inception, handling and/or disposition of the respective claim.

Recommendation #16:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance in the context of claims handling.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of the law.

PERTINENT FACTUAL FINDINGS

Relating to

FINANCIAL REPORTING

Issue Q: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.
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Section 10-4-404, C.R.S. provides in part:

(1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VII)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.

Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

3 CCR 702-3(3-5-1) requires all title insurers authorized to provide coverage in Colorado to annually file a "Colorado Uniform Financial Reporting Plan" in a format described and appended to the regulation as "Attachment A".

In addition, the regulation requires all title insurers to file sufficient financial data and, upon request, statistical data to justify the title insurers rates and otherwise assure the rates used by the Company comply with the requirements of §10-4-403 et. Seq., C.R.S., and are not excessive, inadequate, or unfairly discriminatory.

A review of the Company's 1998⁵ financial statement and related documents and filings demonstrated that the Company failed to file a Colorado Uniform Financial Reporting Plan [3 CCR 702-3 (3-5-1) attachment A] as required by the regulation. In addition, the Company failed to file sufficient financial data to allow the Division to determine whether rates used by the company were excessive, inadequate, or unfairly discriminatory.

Recommendation #17:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the financial data filing requirements established under 3 CCR 702-3(3-5-1(VII)(K)). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its annual filing procedures so that those procedures anticipate filing of the Colorado Uniform Financial Reporting Plan (Schedule A). The Company should also be required to provide written assurances that it will annually file sufficient financial data to allow the Commissioner to determine whether the insurers rates are inadequate, excessive, or unfairly discriminatory and otherwise assure future compliance with Colorado financial reporting and filing laws.

⁵ Although the period under examination included the first two quarters of the calendar year 1999, the examiners restricted their review of the Company's financial filings to 1998. Restricting review to 1998 was mandated by the fact that the annual filing referenced in the text would not have necessarily been prepared or due midway through the 1999 calendar year. The examiners, however, did conduct a review the Company's quarterly Form 9 Financial Statements prepared during the first two quarters of 1999.

Issue R: Improperly advancing and/or paying Company funds into escrow accounts.
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Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VI)(B)(33)) adopted in part to the authority granted under §§ 10-1-109, 10-3-1110, and 10-11-118, C.R.S. provides:

B. The following is a partial, but not all-inclusive, list of acts and practices which are considered unlawful inducements proscribed by this Regulation, and the Colorado statutes pertaining to the business of insurance:

33. Advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds or "closing short", except as provided in Section VII, E.

3 CCR 702-3(3-5-1)(VII)(E)) provides:

E. No title entity that provides closing and settlement services shall disburse funds in connection with closing and settlement services until the funds to be disbursed have been received and are either available for immediate withdrawal:

1. As a matter of right from the financial institution in which the funds have been deposited; or
2. As a consequence of the agreement of the financial institution in which the funds are to be deposited or the financial institution upon which the funds are drawn. Any such agreement shall be made with or for the benefit of the person or entity providing closing and settlement services for a real estate transaction.
3. A title entity may satisfy [*sic*] the requirements of Sub-Paragraph 2. of this Paragraph E. by use of the Good Funds Agreement appended hereto as Attachment C, without amendment or modification. This is the only agreement approved by the Division of Insurance for such purpose.

Nothing in this Paragraph E. shall be deemed to prohibit the recording of documents before such funds are available provided all necessary parties to the transaction consent in writing thereto. Notwithstanding the foregoing, a title entity may advance funds, on behalf of its customers, to pay incidental fees for such items as tax certificates and recording costs, provided, however such advanced funds shall not exceed \$500 in any single transaction.

"Available for immediate withdrawal as a matter of right" includes funds transferred by any of the following means: (I) any wire transfer; (II) any certified check, cashier's check, teller's check, or any other instrument as defined by federal Regulation CC, 12 CFR part 229.10(c).

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(H)) provides:

H. Every title entity shall keep all funds deposited pursuant to any closing and settlement services separate and apart from the assets of the company, in an account designated as a trust account or custodial account and so recognized by the depository institution.

TITLE CLAIMS MADE
July 1, 1998 through June 30, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	6	12%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed 6 exceptions (12% of the sample) wherein the Company paid escrow shortages from funds held in branch escrow accounts and later reimbursed the escrow overdrafts with Company funds via claim checks/drafts.

Recommendation #18:

Within 30 days, the Company should demonstrate why it should not be considered in violation of Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VI)(B)(33)). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has adopted and implemented procedures which will assure that future compliance with the requirements of the law.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON COMMONWEALTH LAND TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
1	12	Issue A: Failure to maintain minimum standards in a record of written complaints.
2	16	Issue B: Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfilled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.
3	18	Issue C: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.
4	21	Issue D: Failing to adopt, print, and/or make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and/or regularly rendered closing and settlement services.
5	23	Issue E: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.
6	28	Issue F: Failure to follow Company underwriting procedures and/or guidelines and discriminatory underwriting practices.
7	31	Issue G: Issuing title insurance policies without obtaining a certificate of taxes due.
8	36	Issue H: Making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON **COMMONWEALTH LAND TITLE INSURANCE COMPANY**

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
9	48	Issue I: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.
10	56	Issue J: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.
11	63	Issue K: Engaging in unfairly discriminatory rating practices and adopting rate rules and/or premium charges that are excessive, unfairly discriminatory and/or adopting rating rules or premium charges that improperly favor producers of title insurance business.
12	65	Issue L: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.
13	72	Issue M: Failing to file a schedule of fees and charges for closing and settlement services with the Colorado Division of Insurance and/or using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.
14	79	Issue N: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.
15	81	Issue O: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON COMMONWEALTH LAND TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
16	84	Issue P: Failure to produce and/ or maintain adequate claims records for market conduct review.
17	87	Issue Q: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.
18	89	Issue R: Improperly advancing and/or paying Company funds into escrow accounts.

EXAMINATION REPORT SUBMISSION

Independent Market Conduct Examiners
Duane G. Rogers, Esq.,
&
J. Reuben Hamlin, Esq.,
participated in this examination and in the preparation of this report.